

Briefing Note Bill C-36: An Act to amend the Criminal Code in response to the SCC decision in AG Canada v Bedford

Background

Providing Alternatives, Counselling & Education (PACE) Society is a Sex Worker-led organization that has provided peer-driven violence prevention and support services to Sex Workers in Vancouver, British Columbia's Downtown Eastside neighbourhood for twenty years. PACE Society was an intervener in Bedford v. Canada. PACE had previously been involved in a parallel case challenging the constitutionality of Canada's Sex Work laws. PACE's Violence Prevention Coordinator, Sheri Kiselbach, had joined along side Sex Workers United Against Violence (SWUAV) and Pivot Legal to challenge federal Sex Work laws.

Bedford v. Canada

In December 2013, the Supreme Court of Canada unanimously struck down three provisions of federal prostitution legislation that criminalized the operating of bawdy houses, living off the avails of Sex Work, and communicating for the purposes of Sex Work. The Court ruled that these laws violated Sex Workers' Section 7 rights under the Charter of Rights and Freedoms on the grounds that they compromised Sex Worker safety. The Supreme Court of Canada gave the Conservative Government one year to introduce new prostitution legislation but made it clear that, in order for any new laws to comply with the constitution, they must prioritize Sex Worker safety.

Bill C-36 not only goes against the spirit of the SCC ruling it replicates the same harms caused by the old laws in addition to introducing draconian provisions that will further harm those involved in this trade. Sex Worker's ability to communicate is a necessary precondition to consent and is restricted by laws that prohibit

communicating for the purposes of prostitution. Bill
C36 violates Sex Worker's human rights and is unconstitutional.

The Evidence

Evidence has shown that laws criminalizing the purchasing of sexual services increase the risk of violence among Sex Workers. Since January 2013, the Vancouver Police Department has shifted their law enforcement efforts to target third parties and sex work clients, which is consistent with the approach outlined in the Conservative Government's proposed prostitution legislation. However, the new policy has failed to decrease the dangers associated with Sex Work. In a recently published study Krusi et al, 2014 highlight the harms associated with laws specific Sex Work laws. The following Enforcement-based approaches and policing within criminalized frameworks have consistently been linked to elevated risks for violence, and reduced ability to negotiate safer sex transactions, including prevention of HIV and other STIs (Krusi et al, 2014; Pivot, 2014; Krusi, 2008; Shannon 2008).

The effects Sex Work prohibition:

- Decreased ability to screen clients and therefore increased risk of violence
- Limited ability to access police protections
- Increased isolation and dangerous working conditions for street-based sex workers
- Reduced willingness on the part of clients to contact police regarding situations of exploitation or trafficking
- Inability by sex workers to establish safe indoor spaces to do sex work
- Creation of significant barrier to working indoors which research shows is safer than working on the street
- Increased risk of violence by denying sex workers a forum to share vital information that improve their security
- Decreased ability of law enforcement to identify and intervene in situations of exploitation, abuse and trafficking
- Reduced likelihood of collaborative relationships between web providers and law enforcement
- Increased risk of misunderstandings about what services Sex Workers are, or are not providing, prices and safer sex requirements
- Rushed negotiations due to Clients fear of being caught and charged

- Clients driving Sex Workers to more isolated places for fear of being caught and charged
- Less likely to pay for protection (Drivers/Body guard/spotters/booking agents etc.)
- Increased fears of being evicted by landlords
- Increased fears of children being removed
- Increased barriers for accessing Sex Work specific organizations for fears of being outed
- Increased internalization of stigma and shame which leads to poorer health outcomes
- Decreased negotiating power for safer sex practices
- Increased discrimination from Health Care providers
- Increased difficulties in accessing housing
- Inadequate social services

Overview of Bill C-36 and Recommendations for Amendment

We are not recommending any amendments to Bill C-36 because, in short, we believe that the legislation is fatally flawed and, echoing previous testimony by Pivot Legal and others, would not withstand a constitutional challenge. As we know from past experience, constitutional challenges take years to wind their way through the courts. It is unacceptable that Sex Workers in our community and across Canada be subjected to untold violence due to laws that are unconstitutional.

We call upon the government to immediately refer Bill C-36 to the Supreme Court and publicly release all legal opinions the government has solicited on the Bill. Given that the Justice Minister has publicly acknowledged that Bill C-36 will face a future constitutional challenge, the Government should recognize the critical importance of expediting this legal process. After all, the government is obligated to pass laws that comply with the Charter of Rights and Freedoms. If, instead, the

Government continues to pursue legislation that recreates conditions that perpetuate violence, then it will be complicit in inflicting structural violence on Sex Workers in Canada.

Conclusion

The Bill before the Committee makes a number of changes to the Criminal Code and other statutes, claiming to be “protecting Sex Worker’s”. Although, the Bill has been touted as the government’s response to violence against Women; trafficking and youth exploitation these laws were never in question and remain on the books. There is nothing in the legislation itself that in fact addresses the problem of violence, but rather increases its likelihood. Bill C-36 attempts to re-package the same laws that were found to be unconstitutional by the SCC and if tabled into new law will result in the deaths of more missing and murdered Canadians.

Work Cited:

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